

# **TRANSCRIPT OF RECORD**

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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1962**

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**No. 513**

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**WILLIE NORVELL, PETITIONER,**

**VS.**

**ILLINOIS**

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF ILLINOIS**

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**PETITION FOR CERTIORARI FILED AUGUST 22, 1962**

**CERTIORARI GRANTED OCTOBER 15, 1962**

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**IN THE SUPREME COURT OF ILLINOIS**

No. 36830

**PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Defendant in Error,**

**vs.**

**WILLIE NORVELL, Defendant-Plaintiff in Error**

**WRIT OF ERROR TO THE CRIMINAL COURT OF COOK COUNTY**

**Honorable Edgar A. Jonas and Richard B. Austin, Judges Presiding**

**Abstract of Record from Criminal Court of Cook County  
—Filed January 12, 1962**

**Thomas P. Sullivan, Robert E. Pfaff, 135 S. LaSalle Street, Chicago 3, Illinois, Attorneys for plaintiff in error, Willie Norvell.**

[fol. 1]

**PROCEEDINGS**

**Placita**

**Indictment for murder, No. 41-1473, returned by Grand Jury of Cook County on September 22, 1941.**

**Count 1 of indictment against Edgar Shepard, James Norvell and Willie Norvell, alleging that on August 17, 1941 the defendants murdered Michael Hetman by striking him on the head and neck with a club.**

**Count 2 of indictment against same defendants alleging that on August 17, 1941 they murdered Michael Hetman by striking him.**

**Docket entry September 25, 1941: Defendant Willie Norvell arraigned. Plea of not guilty entered by defend-**



ant Willie Norvell. Case assigned to Hon. Edgar A. Jonas for trial.

Motion and order for Behavior Clinic examination of defendant Willie Norvell, dated September 25, 1941.

Docket entry October 29, 1941: Defendant Willie Norvell waives jury trial. Trial begun and testimony of witnesses heard. Case continued to October 30, 1941. Age of defendant Willie Norvell is 35 years.

[fol. 2] Docket entry October 30, 1941: Further testimony of witnesses heard. Cause continued to November 3, 1941.

Docket entry November 3, 1941: Court finds defendant Willie Norvell guilty of murder as charged in the indictment. Defendant Willie Norvell's motions for new trial and arrest of judgment denied and exceptions taken. Judgment entered on finding of guilty. Defendant Willie Norvell sentenced to a term of 199 years of confinement at hard labor in the Illinois State Penitentiary. Defendant Willie Norvell's motion for allowance of 90 days' time in which to prepare and file his bill of exceptions allowed.

Docket entry September 11, 1952: Defendant Willie Norvell moves the Court for records in the cause. Motion continued to September 29, 1952.

Docket entry September 29, 1952: Defendant's motion for records denied by Judge Joseph A. Graber.

Order entered December 4, 1956 by Judge Wilbert F. Crowley:

Upon the verified Petition of Willie Norvell filed pursuant to Supreme Court Rule 65-1(2), the Court being fully advised in the premises, Finds:

[fol. 3] (a) That the petitioner was at the time of his conviction and is now without financial means to pay for the cost of a stenographic transcript of the proceedings at his trial, and

(b) That a stenographic transcript of the proceedings at his trial is necessary to present fully the errors recited in the petition.

It Is Therefore Ordered:

1. That the Official Shorthand Reporter of this Court forthwith transcribe an original and a copy of all of the

notes taken of the proceedings in the above-entitled cause, Indictment No. 41-1473;

2. That the Official Shorthand Reporter of this Court shall deliver the original and a copy of said transcript to Willie Norvell without cost within a reasonable time.

Order entered December 27, 1956 by Judge Crowley, defendant's motion for common law record allowed.

Order entered March 18, 1958 by Judge Harold P. O'Connell, defendant's motion for writ of mandamus denied.

Docket entry March 24, 1961: Bill of exceptions signed, certified and sealed by Judge Richard B. Austin and ordered filed instant.

Court reporter Gerald Healy's certificate of compliance, filed March 24, 1961:

[fol. 4] I, Gerald J. Healy, Official Shorthand Reporter of the Criminal Court of Cook County, Illinois, do hereby state that on the 24th day of March, A.D. 1961 that portion of the original Bill of Exceptions in the above entitled cause, as transcribed by me, was filed with the Clerk of this Court; that on the 24th day of March, 1961, a copy of said Bill of Exceptions was delivered to the attorney for the defendant, Robert E. Pfaff, 135 South LaSalle St., Chicago, Ill. which was done pursuant to order of the Chief Justice of the Criminal Court of Cook County.

Notices of motion, filed June 15, 1961.

Defendant Willie Norvell's motion filed June 15, 1961:

Now comes defendant Willie Norvell, by Thomas P. Sullivan and Robert E. Pfaff, his attorneys, and moves that this Court enter its order

(1) Fixing a date for hearing to the end that the stenographic transcript of the trial of this cause may be procured if the official court reporter's shorthand notes are still in existence and can be transcribed or, if said notes are not in existence or cannot be transcribed, that an adequate and complete narrative bill of exceptions may be constructed; or

[fol. 5] (2) If upon such hearing it is found either (a) that it is impossible to procure a stenographic transcript of the trial of this cause; or (b) that an adequate and complete narrative bill of exceptions cannot be constructed, then in that event, vacating the judgment of conviction and sentence

entered upon said judgment, heretofore entered in this cause on November 3, 1941, and granting defendant a new trial in this cause.

In support of the foregoing motion defendant states:

1. On September 22, 1941, defendant was indicted by the Grand Jury in and for Cook County, Illinois, for the crime of murder, Indictment No. 41-1473.

2. Thereafter, on October 27, 28, 29 and 30, 1941 and November 3, 1941, defendant was tried for the aforesaid crime in this Court, before the Honorable Edgar A. Jonas, sitting without a jury.

3. The Official Court Reporters who took shorthand notes of the proceedings on the various days at the aforesaid trial are the following:

October 27, 28, 29, 1941—E. M. Allen and Margaret	Meek
October 30, 1941	—Gerald J. Healy
November 3, 1941	—E. M. Allen and Gerald J. Healy

[fol. 6] 4. At the time of his trial and continuing to the present time, defendant was and is without funds with which to purchase a transcript of the report of proceedings (or bill of exceptions) of his trial. Since the time of the entry of the conviction on November 3, 1941, defendant has been incarcerated in the Illinois State Penitentiary.

5. On November 29, 1956, defendant filed a petition in this Court pursuant to Rule 65-1(2) of the Rules of the Supreme Court of Illinois, requesting that he be supplied, without cost, a copy of the report of proceedings at his trial. On December 4, 1956, said petition was granted by the Honorable Wilbert F. Crowley.

6. Defendant and his counsel have obtained a copy of the report of proceedings of that portion of his trial for which Gerald J. Healy served as Official Court Reporter, but defendant and his counsel have been unable to procure a copy of the report of proceedings of the balance of defendant's trial.

7. E. M. Allen and Margaret Meek, the Official Court Reporters who attended portions of defendant's trial, are both deceased, Mr. Allen having died August 26, 1949 and Miss Meek on November 9, 1953.

[fol. 7] Wherefore, defendant prays the entry of an order as aforesaid.

Verified by Robert E. Pfaff on June 2, 1961.

Docket entry June 29, 1961: Hearing on motion for transcript of reporter's notes or narrative bill of exceptions. Case continued to July 18, 1961.

Docket entry July 18, 1961: Hearing on motion for transcript of reporter's notes or narrative bill of exceptions. Case continued to August 1, 1961.

Order entered August 1, 1961 by Judge Austin:

This cause came on for hearing on the motion of defendant filed June 15, 1961. The Court has heard and considered the evidence introduced by the parties.

It is ordered that defendant Willie Norvell's motion for new trial is denied.

It is further ordered that the official court reporters who took notes of the hearings in this case on June 29, 1961, July 18, 1961, and August 1, 1961, shall forthwith transcribe an [fol. 7a] original and a copy of said notes, without cost to defendant, and shall file the original with the Clerk of this Court, and transmit the copy to defendant's attorney Thomas P. Sullivan, 135 S. LaSalle Street, Chicago, Illinois; provided that said transcript shall include only (i) the testimony of witnesses, (ii) motions and objections with respect to testimony of witnesses, and (iii) stipulations.

Writ of error No. 2944 from Supreme Court of Illinois, filed September 18, 1961.

Order entered by Hon. Walter V. Schaefer of Supreme Court of Illinois on October 3, 1961, excusing defendant Willie Norvell from filing a petition for writ of error, directing the Clerk of the Supreme Court to place the writ of error on regular docket, and to assign a regular docket number to the case, and extending time for defendant to file record on appeal to November 15, 1961.

Order entered by Judge Drucker on November 3, 1961, time for defendant Willie Norvell to obtain certification [fol. 8] of report of proceedings extended to and including December 9, 1961.

Order entered by Judge Drucker December 8, 1961, report of proceedings and Petitioner's Exhibit 1 certified, approved and ordered filed instant.

Report of proceedings held before Hon. Edgar A. Jonas.  
David L. Leeds, Assistant State's Attorney.

Herman Aschen for defendant Edgar Shepard.

Claude Holman for defendants Willie and James Norvell.

Reporter's Note:

This Bill of Exceptions is not in any way to be considered as a complete record of the proceedings had in this cause. Mr. E.<sup>d</sup>M. Allen and Miss Margaret Meek, the official Reporters who reported all of the proceedings on October 27th, 28th and 29th, 1941, have both passed away, Mr. Allen on August 26th, 1949, and Miss Meek on November 9th, 1953.

The transcript for October 30th, 1941, taken by Mr. Healy, is complete for that date.

The transcript for November 3rd, 1941, contains only that portion reported by Mr. Healy. The proceedings reported by Mr. Allen, of course, are not available.

/s/ Gerald J. Healy.

[fol. 9] HEARINGS BEFORE JUDGE JONAS—October 30, 1941

EVIDENCE ON BEHALF OF DEFENDANT

RUBY LEE NORVELL, a witness called by defendants James and Willie Norvell, testified as follows:

Direct examination.

By Mr. Holman:

My name is Ruby Lee Norvell. I am a sister-in-law of Willie Norvell. I married one of his brothers. Edgar Shepard is my brother. I live at 1958 Hubbard Street, in the rear. I have known Willie Norvell for six years. I have had occasion to visit at his house. I visit there right along.

I have seen Willie Norvell quite often during the past six years, probably most every day. I have had occasion to observe him and to see how he acts at different times. I have been staying at their house now about a year.

I have observed Willie Norvell when he slept. When we tried to wake him up, the only way we could get him out of bed would be to call Bertha or Alice, somebody's name. Then he jumps and runs all the way through the house and he comes back to bed. He said, "Now, what is the use of coming in the house if they don't see us." He would get up and lay back down and get up and run back through the house.

He said his head bothered him a lot and his eyes. Some- [fol. 10] times he looked all right and again he didn't. When he didn't look all right, sometimes he would be real quiet. When he would be different, all at once he would jump up and cause a disturbance. He would eat a lot of sugar.

I saw him after an explosion took place. When I would speak to him I would say, "Hello, what is wrong with you?" He said, "I don't know, I haven't did nothing." And I said, "I just asked you." He said, "Nothing."

I was with Willie until about 2:30 on August 17. I fix the fact that it was on the 17th instead of some other Sunday because on the 16th Willie and his wife brought James home from the hospital, and my husband just got his car



out of the shop. James got out of the hospital on August 16th and the next day was August 17th.

At 2:30 Willie and his wife walked up, and they went to see his grandmother. Around three o'clock we all got in the car and went out riding. At first we went to Carroll Avenue and got the suit James has on now from a lady over there. First he thought he was wanted at home but he didn't want to go home right then. He left me between 7:30 and 8 o'clock. Willie and his wife and grand-[fol. 11] mother left and went to 40th and State Street on the south side.

From my observations of Willie Norvell, I have an opinion as to whether or not he is sane or insane. In my opinion he is insane.

#### Cross-examination.

By Mr. Leeds:

I am 18 years old and have been married about two years. I live in the same apartment building the Norvell family lives in. They live in front and I live in the back.

I was born in Laramie, Mississippi and have been in Chicago all my life. My education consists of grade 2B at McKinley High.

I was home the night the police attempted to arrest Willie Norvell on September 17th. I don't know what Willie Norvell did with respect to jumping out of one window into another, because the police officers had us down stairs.

I saw Willie Norvell at 2:30 on August 17th. He stayed with me until 7:30 or 8 o'clock. Edgar Shepard was with me all day until 8 o'clock. When I left the house he was talking to Mr. Jessie and James was there until then. This was 8 o'clock. James was asleep on the day bed.

When Willie is asleep and you tried to wake him up [fol. 12] and go in and yell and call like "Bertha" or "Alice", a girl's name. That is the name of a girl he used to go with. He jumps out of bed and runs all the way around the house two or three times and jumps back in bed and jumps up.

Willie told me he was in grade 8-B in school.

Q. Have you an opinion as to whether Willie Norvell was able to distinguish between right or wrong on August 17th, 1941?

Mr. Holman: I object.

The Court: She may answer.

The Witness: A. I wouldn't know.

Redirect examination.

By Mr. Holman:

I went to 2-B in high school.

Q. You feel that you are able to tell when a person is crazy and not crazy?

A. Yes.

Mr. Leeds: I object.

The Court: Objection sustained. Strike it out.

Mr. Holman: Q. Are you able to have an opinion as to whether or not a person is sane or insane?

A. Yes.

Mr. Leeds: I object.

The Court: The same ruling. Strike.

[fol. 13] Mr. Holman: Q. He was showing those peculiar antics by jumping in the bed?

The Court: Reframe the question so you will incorporate the testimony.

Mr. Holman: Q. The state's attorney asked you about some peculiar things what Willie did in regard to when he was asleep in the bed. You remember that question, do you?

A. Yes.

Q. Have you ever seen any normal person, that you had an opinion was normal, carry on like that?

A. No sir.

Mr. Leeds: I object.

The Court: Objection sustained.

When the police came to arrest Willie, I was home in bed. The police had us down stairs. They arrested my husband and me and took us down to the station. We had not done anything.

HANNA DAVIS, a witness called by defendants James and Willie Norvell, testified as follows:

Direct examination.

By Mr. Holman:

My name is Hanna Davis. My address is 447 N. Damen Avenue. I have known Willie and James Norvell since they were small kids. I am related to them by marriage. I have had occasion to observe them during their life-[fol. 14] time.

Willie Norvel suffered from the disease of rickets when he was small. When you would stand him up, he would stand and quiver. He had rickets about 5 or 6 months.

He had trouble with his eyes. It was caused by an explosion of a gun into his eyes. After that he acted real funny. This happened over a period of 5 or 6 months, I think.

He had fits over a period of 6 years. For 5 months they had to put spoons into his mouth to keep him from eating up his tongue.

He used to run away from home and sleep under the steps. They had to go out and get him and bring him back and he would leave again. It would be real cold when he would be out sleeping. Everyone else would be in the house by the stove and he would be out.

His brother struck him in the back of the head with a brick and knocked him unconscious for about two hours. After that he would act real funny. He would act right quiet and when you bothered him, he would jump and jump around.

I have an opinion as to whether or not Willie Norvel is sane or insane. In my opinion he is insane.

[fol. 15] Cross-examination.

By Mr. Leeds:

I have an opinion as to whether Willie was able to distinguish between right or wrong as of August 17, 1941. He didn't know right from wrong. I don't understand the question.

Redirect examination.

By Mr. Holman:

I understand what he means by an opinion. I have an opinion as to whether Willie Norvell is sane or insane. On August 17th he was insane. I have an opinion now as to whether he could tell the difference between right and wrong on August 17, 1941. My opinion is that he could not.

Recross-examination.

By Mr. Leeds:

I last saw Willie Norvell at church on August 17th. I was at church and they came to church. I saw him after the first Sunday in August. I saw him at night on Sunday, August 17th. I saw him over to his grandmother's that night. I don't know what time it was. It was dark outside.

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HATTIE WILLIAMS, a witness called by defendants James and Willie Norvell, testified as follows:

Direct examination.

By Mr. Holman:

My name is Hattie Williams. I live at 1958 Hubbard Street, Chicago. I am 73 years old.  
[fol. 16] I am the grandmother of James and Willie Norvel. I raised them. I have had them ever since one of them was one day old.

Willie Norvell had some diseases during his childhood. He had fits when he was two years old. He had the rickets.

He had a peculiar way. He would go out in the alley and if he found a dead puppy he would bring it home and wrap it up. I would find that dog in my house. None of the other children did that. If he would come across some puppies that somebody put out, he would take them and bring them all into the house and hide them. None of the other children did anything like that.

That tooth he has out in front, he had a spasm and fell off the gate and he knocked a hole back here in his head. He was 8 years old when he fell off the gate. After that he acted crazy.

He would act very crazy and wouldn't ever have much to do with the other children. He would be different with the children and I would have to stay home.

He would be quick to get mad; and when he had those spells he would get stiff and straighten out. You would have to rub him and he would claim he was afraid and [fol. 17] wouldn't say anything two or three days. He was very drowsy. None of the other children acted like that.

He would take sugar. I had to quit buying sugar. I would buy 5 cents worth of sugar every morning to keep him from pouring it in the milk bottles.

When he was about 8 years old, he would slip down the alleys by days and get into ash cans to keep his feet warm. He would hide himself that way all day and people would come along and tell us about this boy being in the alley. I would have to go after him and make him come home. He would get out at night. We missed him. Then we would have to go along and look through the alleys and go to everybody's house to find that boy. During these times it was cold outside. Everyone else would be at home, at the fire.

I have seen him out in the streets in the winter time with a swim suit on. He would go out without his clothes on if we didn't watch him after those spells. He was 13 or 14 when he was doing this. He had done this all along. None of the other children did that.

He didn't go anywhere in school, the second or third grade. They couldn't teach him anything. They turned [fol. 18] him away from school and put him over to the Montefiore. They said they thought he could make something out of wood to keep his mind working. Then he wouldn't go. Then they put him over here to the homes on Roosevelt, the juveniles. He stayed there in that school a while. I saw a paper on which a doctor said this is a feeble minded boy.

Willie's brother hit him in the head with a brick. He fell down, unconscious. He stayed sick, drooping around

for one week. After that he didn't act good. He always had those spells.

I have an opinion as to whether Willie is sane or insane. In my opinion he is insane. I have an opinion as to whether or not he was sane or insane on August 17, 1941. Willie could not tell the difference between right and wrong on August 17th, 1941.

Cross-examination.

By Mr. Leeds:

I don't know what the word "opinion" means.

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Dr. WILLIAM H. HAINES, a witness called on behalf of defendants Edgar Shepard and James Norvell, testified as follows:

Direct examination.

By Mr. Aschen:

Defendant Edgar Shepard is a mentally defective individual, but he knows the nature of the charge against him and he is able to cooperate with counsel. A mental [fol. 19] defective is one who doesn't acquire the full ability to learn.

If I examined Shepard in a certified free dispensary, I would recommend his commitment to an institution.

Direct examination.

By Mr. Holman:

Mr. Holman: The doctor is called on behalf of defendant James Norvell.

I classify James Norvell as a mental defective of the moron type. In my opinion he could be improved, but he could not be brought up to normal.

The defendants rest.



## STATE'S REBUTTAL EVIDENCE

DR. WILLIAM H. HAINES, a witness called on behalf of the State, testified as follows:

## Direct examination.

By Mr. Leeds:

I am the same Dr. Haines who testified previously. I conducted a psychiatric examination of Willie Norvell.

I examined him first on October 16, and I completed my examination on October 22. The physical examination showed a well developed male who had a recent gun shot wound beneath the right knee. Examination of the heart, lungs and nervous system revealed no pathology.

[fol. 20] I also examined the social history of this defendant. My findings in that connection were that he was born in Missouri, after which the family moved to Chicago. As a child he suffered from rickets. At age 3 the mother deserted the family and he was cared for by an elderly housekeeper whom the father brought into the home. He received little supervision in the home.

At age 15 he was transferred to a correctional school because of irregular attendance. Psychological tests revealed an I.Q. of 70. The school reports that he had difficulty in concentrating. His attention was unsteady and he was easily distracted.

He had a speech difficulty and both his auditory and visual memory were poor. He was placed in an ungraded special division class. He left school at age 16, and worked on and off as a laborer. In 1940 he went to Arkansas and worked in the fields. He returned to Chicago in 1941. He had an occasional odd job since. A few months ago he married a 15 year old Negro girl, who had recently graduated from grammar school. She was pregnant at the time of the marriage.

The patient is described as having a quick temper, gets angry easily and hits when he gets mad. He is nervous [fol. 21] and restless, tense and jerks in his sleep. Has a hot temper.

I made a psychiatric examination. It revealed an 18 year old Negro male, married, neatly dressed, cooperative. Very alert. There is no press of speech or overt behavior.

He states his mother was killed in an accident in 1933, when the patient was 8 years of age. He states his father separated when he was 2 months old and adds, my father now lives with us.

He quit school in 1939 to take a job, as he had to support his brother and father. The father was in an automobile accident in 1940 and both legs were broken.

The patient states he started to school at the age of 4 and quit the 8-A grade in 1914 (sic). States he had no trouble with his studies, but had difficulty because of his attendance. He is oriented in all spheres. General information is adequate, calculation is poor. Judgment stories satisfactory. Venereal disease is denied. Makes no complaints with reference to the nervous system and questioning elicits none.

The psychological examination revealed 66 on the Bellevue-Wechsler, 63 per cent of the Verbal and 77 per cent [fol. 22] on the Performance. The Army Alpha 72 per cent, the Otis Self Administering was 56 per cent, and the Stanford-Binet was 66 per cent.

That was the full extent of the examination I made of this defendant.

Based upon my examination and my experience I have an opinion as to whether the defendant, Willie Norvell, is sane or insane. At the time of my examination October 16th to October 22nd, it is my opinion that Willie Norvell is sane.

I have an opinion based upon my examination as to whether or not Willie Norvell is capable of forming a criminal intent. My opinion is that he can. I have an opinion, based upon my examination of Willie Norvell, as to whether he was able to distinguish right from wrong. It is my opinion that he can.

Based upon my examination of Willie Norvell, I have an opinion as to whether he can resist the impulse to commit a criminal act. It is my opinion that he can.

Assuming a well developed colored male about 18 years of age, born in Missouri, whose family moved to Chicago as a child, and this colored male about 18 years of age at

an early age suffered from rickets, and at the age of 3 his mother deserted and he was cared for by an elderly house-[fol. 23] keeper, that he received little supervision in his home, and at the age of 15 was transferred to a correctional school because of irregular attendance in school; that the psychological tests revealed an I.Q. of 70; that the school reports reveal he had difficulty in concentration, his attention was unsteady and easily distracted, his speech was difficult and his auditory and visual memory was poor; that he was placed in a special ungraded division of the class and at the age of 16 he left school; that he worked on and off as a laborer and in 1940 went to Arkansas and worked in the fields there and returned to Chicago in 1941; that he had occasional odd jobs since; that he married a 15 year old Negro girl who had recently graduated from grammar school; that he had a quick temper gets angry easily and hits when he gets mad; that he is nervous and restless, is tense and jerks in his sleep; that he has a huge appetite and craves sweets. Assuming further that on August 17, 1941, this hypothetical person, in company with two other young men went to a factory at 3120 to 3152 W. Fulton Street, in the rear, and there one of the three men threw a brick through a window and a door was opened and a watchman put his head out. This hypothetical [fol. 24] person struck the watchman on the head with a stick and forced the individual into the plant and proceeded to beat him further, which resulted in the death of this watchman on August 17, 1941. Assuming further that after the watchman was knocked out he was tied up by this person and his companions; that then this person and one of the companions went into the office of this plant and this person broke a combination lock and opened the safe. Upon finding nothing this person and his companions left this plant and thereafter went for an automobile ride. Then went out to the south side to spend the night. Assuming further that on or about September 17th, 1941 the police attempted to arrest this person and he jumped from one window to another on the third floor, ran down the stairs and in through the alleyway and was ordered to halt by a detective; upon refusal to halt was shot and continued to escape; the person then hid and later, on September 21st, was chased and ran away from the police officers who

sought his arrest, and ran through various places and then dove through or jumped through a skylight and hid in the basement of this building and was put under arrest by the police; he was subsequently questioned on September 21st in the police station by an assistant state's attorney, where [fol. 25] in he gave a complete story as to the occurrence at this plant on August 17th, 1941, and also detailed in that statement the circumstances concerning this attempt to arrest him and the arrest on the date in question.

Mr. Leeds: Q. Assuming all those facts, Doctor, have you an opinion based upon your experience and your education, as to whether or not this hypothetical person was sane or insane on August 17th, 1941?

Mr. Holman: I object, if the Court please.

The Court: What is your objection?

Mr. Holman: The objection is that he has omitted a number of essential factors testified to by the defendant.

The Court: Add to your question.

Mr. Leeds: Testified to by the defendant?

Mr. Holman: By the defendant's witnesses.

Mr. Leeds: Yes.

Q. And assume further, Doctor, that relatives of the hypothetical person testified that he was insane; that he suffered from rickets and that he had received a head injury as a youth, and that he had a habit in his youth of sleeping under porches, running away from the house, and [fol. 26] of bringing in dead dogs into the house;

Have you an opinion, Doctor, based upon your experience and education as to whether this hypothetical person was sane or insane on August 17th, 1941?

Mr. Holman: I object. I have the same objection. There are still quite a number of omitted facts, if the Court please.

I make the further objection that the question is improper in its form for the reason he asked the Doctor to consider the fact that the witnesses testified to that. As I understand the law, he has to consider as facts whatever the evidence shows and not the fact the witnesses testified to it.

A further objection, he has omitted from his hypothetical question that the evidence shows that in cold weather the boy slept under a porch; he has omitted the fact he

stayed in ash cans hour after hour and neighbors had to notify his relatives about it. He has omitted the fact that in the cold winter time he was out in a swim suit at the age of eleven years. Also omitted the fact he fell off a gate [fol. 27] when he was five or six years old, and knocked in the head by a brick in his brother's hands and was knocked out for two hours and wasn't able to concentrate. He has changed the fact which the evidence shows, that he dove down into the skylight head first and not that he jumped—

The Court: As to that objection, the doctor may take into consideration this set of facts that you have detailed here. That may be added to the hypothetical question.

Mr. Hollman: And the further fact which you recall, the calling of two particular names to awaken him, Alice and Bertha.

The Court: The doctor may take that into consideration.

Mr. Leeds: Yes.

The Court: As to the other objection you stated to the question, if this is incorporated in the question, I will allow it. Overruled.

Mr. Leeds: Q. Have you an opinion, Doctor?

A. Yes. As to the calling of the names, that is Alice and the other name, to awaken him, how often did that take place?

Mr. Holman: All his life.

[fol. 28] Mr. Leeds: There was no such testimony. On occasions they used them.

Mr. Holman: On occasions they used them, but it was all during his life that these occasions arose.

Mr. Leeds: But they weren't constant.

Mr. Holman: No.

Mr. Leeds: They were from time to time that these were used.

Mr. Holman: Over his whole life period.

The Court: The evidence further shows that one of the girls he went around with, her name was Alice.

Mr. Leeds: And one was Dorothy.

Mr. Holman: No.

The Court: One was Alice. And then the witness testified about that,—about this matter of jumping out of bed

on the calling of either of those names, which had taken place to her knowledge during those years she knew him.

Mr. Leeds: That is correct.

The Court: All right.

The Witness: Can you give me an example of that?

Mr. Holman: No.

Mr. Leeds: Of what?

Mr. Holman: I submit we can't elaborate on it.

The Court: Q. Now, taking all the facts into consideration as have been detailed here, can you give the Court an opinion as to whether he is sane or insane? First state whether you have an opinion.

A. I have an opinion.

[fol. 29] Mr. Leeds: Q. What is that opinion?

A. That he was sane.

Mr. Holman: I move the answer be stricken, because he doesn't give the reasons for his opinion. That is always necessary.

The Court: Well, you have a right to ask him that.

Mr. Leeds: Yes.

The Court: Either side has a right to ask him to state the reasons. It is not compulsory.

Mr. Holman: As I understand it, it is compulsory.

#### Cross-examination.

By Mr. Holman:

It would not change my opinion if it had been necessary all his life from the time he was 6 years old until today to call these names in order to awaken him. When I asked for the example of this activity it was not for the purpose of forming my opinion. I had an opinion before that. I understand I am testifying about a hypothetical person and not about any one individual. The fact that this hypothetical person had been knocked in the head and knocked unconscious for 2 hours would not change my opinion. I took into consideration in giving my opinion the fact that he was knocked unconscious and stayed unconscious for 2 hours and that afterward he acted crazy and stared into space. I would still say he was sane.



I would still say he was sane after considering that he had rickets in childhood. My opinion is not changed by considering the fact that he had fallen off a pole when he was 5 years old and knocked -conscious. My opinion is not [fol. 30] changed by the fact that he was up on a two story building and dove through the skylight. He was still sane.

The State rests.

The defense rests.

The Court: I know there will be some questions raised about the proper admittance of those confessions where there is no basis laid under the law or evidence of warning under the statute and making known that they have certain constitutional rights. Assuming that is stricken, where are you in your evidence in this case? You are in a position, of course, to have witnesses testify verbally, you know that.

Mr. Leeds: Yes. We have had verbal conversations.

The Court: Well, you have verbal conversations, but have you in the record any conversation about the actual crime?

Mr. Leeds: No. I don't think it was necessary. I am prepared to argue as to the warning right now and rely on the Fox case.

The Court: Well, I want to state the situation for the record, that if the confessions as to two of these boys are stricken, there is no testimony whatsoever against them [fol. 31] outside of the verbal statements, if they are in the record, that incriminate these boys.

Mr. Leeds: I will say this, there is the verbal statement of the defendant, Willie Norvell, that is definitely in the record, and I think there are other statements, but I am not certain. The one that stands out in my mind is the one of Willie Norvell, where he stated to the police officer he killed that man, killed that watchman. Officer Nygren testified to that.

The Court: You have the exhibits. We will want them in the argument. Bring them in Monday morning at 11:30 A.M.

## STATEMENT OF DEFENDANT

November 3, 1941.

(Note: This is Healy, following Allen at 2:30 P.M.)

Defendant's motion to suppress confessions denied:

Statement of Willie Norvell taken in the captain's office, Warren Avenue Police Station, 2743 Warren Avenue, Chicago, on Sunday, September 21, 1941, at 2:30 o'clock P.M.

Present: David Leeds, Assistant State's Attorney; Captain Walter McGloon; Lieutenant LeRoy Steffen; Officer Walter Rusin; Anton Remenih. Reported by F. A. Sheeder: [fol. 32] MR. LEEDS: What is your name?

A. Willie Norvell.

Q. Where do you live?

A. 1958 Hubbard Court.

Q. How old are you?

A. Eighteen.

Q. Are you married or single?

A. Married.

Q. How far did you go in school?

A. Eighth grade.

Q. Did you graduate?

A. No Sir.

Q. And what is the school you attended that you reached the eighth grade in?

A. Emerson.

Q. Can you read and write the English language?

A. Yes sir.

Q. Do you understand the questions that I am asking you so far?

A. Yes sir.

Q. If you do not understand me, will you say so?

A. Yes.

Q. What have you been doing for a living?

A. Well, first, I was cutting timber down in Arkansas, and my father got his leg hurt; I was down there when it happened—

[fol. 33] Q. And when was that?

A. That was in '40.

Q. 1940?

A. Yes.

Q. And how long did you stay in Arkansas?

A. Seven months.

Q. Then you came back to Chicago?

A. Yes sir.

Q. Have you been working here in Chicago?

A. Yes, I worked in a foundry motor equipment company at 4600 West Harrison.

Q. When did you work there?

A. I worked there about—let's see, it was in '40, I worked there about a year and four months.

Q. How long have you been out of work?

A. Well, I go to the market every day and get a job on the market loading and unloading trucks down there, on the corner of Randolph Street there is a big building there.

Q. But you have had no steady employment since you returned from Arkansas, have you?

A. No sir, just on and off.

Q. Are you married or single?

A. Married.

[fol. 34] Q. What is your wife's name?

A. Amie, Amie Norvell.

Q. Do you live with her at that same address you gave us?

A. Yes sir—no, I lived there sometimes and sometimes I lived on the South side at the Brookmont Hotel.

Q. You understand that my name is David Leeds, I am an assistant state's attorney, don't you?

A. Yes.

Q. This gentleman right here I am pointing to is a court reporter. You understand that?

A. Yes.

Q. He is taking down what I am asking you, in shorthand, and your answers, and he will later transcribe into writing—

A. Yes sir.

Q. You understand all that?

A. Yes.

Q. Now, since you have been arrested, nobody has threatened, beaten you or intimidated you in any way, have they?

A. No sir.

Q. Now, you gave a statement to the police, did you not, [fol. 35] at 11:40 A.M. today regarding this occurrence

wherein one Michael Hetman, a watchman was killed at 2130 to 52 West Fulton Street, did you not?

A. Yes sir.

Q. Now, the statement you gave the police at that time was the truth, wasn't it?

A. Yes sir.

Q. You also understand that I am going to ask you a lot of questions concerning that occurrence, don't you?

A. Yes.

Q. Understanding that, you are willing to give me a statement of your own free will concerning that?

A. Yes sir.

Q. Now, nobody has held out any hope or promise of reward for making a such statement, have they?

A. No sir.

Q. And you understand that the statement I am going to take from you at this time will be used against you at a future criminal proceeding, do you understand that?

A. Yes.

[fol. 36] Q. And with that understanding you will tell me about it, will you?

A. Yes.

Q. Do you know what time you were arrested?

A. I think about eleven—let's see. I don't know exactly what time it was, but somewhere about eleven, I think. The officer knows.

Q. About eleven o'clock this morning?

A. Yes.

Q. Do you know where you were at that time?

A. On the corner of Ashland & Lake.

Q. Now, since you have been in custody the police have taken you to the Bridewell Hospital for treatment for your wounded leg, haven't they?

A. Yes sir.

Q. You were also treated for a head injury, were you not, at the Bridewell Hospital?

A. Yes sir.

Q. And you got that somewhere during your attempt to make an escape from the police today, didn't you?

A. Yes sir.

Q. Now, do you know what sort of place is located at 2130 to 52 West Fulton street?

A. Yes sir.

[fol. 37] Q. What is located there?

A. Well, there is a furniture factory where they make duofolds and tables, make the forms of it.

Q. Do you know James Norvell?

A. He is my brother.

Q. You understand he is arrested and in custody in connection with this crime?

A. Yes sir.

Q. Do you know Edgar Shepard?

A. Yes sir.

Q. How long have you known Edgar Shepard?

A. About three years.

Q. He has been a very good friend of yours, hasn't he?

A. No, he never—he never run with us. My brother has been going with his sister about six years, that is my oldest brother.

Q. Your oldest brother's name is Jesse?

A. Jesse.

Q. Well, Edgar has been very close to you for the last three months, hasn't he?

A. Not for that time, but he and my brother went together.

[fol. 38] Q. Well, he has been going out with you sometimes, hasn't he?

A. Sometimes he do.

Q. When did you plan to go over to 2130-52 West Fulton Street to break in that factory?

A. Well, Edgar Shepard, he went around and looked at the joint—looked at the place, and I just come from the Brookmont Hotel that morning. It was on Saturday morning—

Q. How long ago was that?

A. It was about a month ago, I think.

Q. Well, this occurrence took place on August 17th, 1941, that was a Sunday?

A. Yes sir.

Q. Now, just before that Sunday when did you plan to go over and break into the place, how long before that day?

A. About a week.

Q. Who looked the place over?

A. Edgar Shepard.

Q. Now, did you know about the place a week before:

A. No sir, but Edgar come back all the time—I didn't know nothing about it.

[fol. 39] Q. Well, when was the first time you knew anything about going in to break into that place?

A. Eddie Shepard come up to my house and got me and my brother about a week before.

Q. What did he say regarding the place?

A. Well, he said he knew a place where we could get in at.

Q. Did you go over and look at the place that day?

A. No sir, I went that Sunday.

Q. The following Sunday?

A. Yes sir.

Q. Now, what time did you see Edgar Shepard on the 17th?

A. I think about four o'clock.

Q. In the afternoon?

A. Yes.

Q. Was your brother James Norvell with you?

A. Yes sir.

Q. Did you immediately go over to 2130-52 Fulton Street?

A. Yes sir.

Q. How did you go over to the place?

A. Went through the alley.

[fol. 40] Q. Did you walk from your house or from where?

A. Walked from my house.

Q. And in what direction did you go, down the alley east or west?

A. West.

Q. When you got to the rear of 2130 did you have a conversation either in the rear of the place or before you got to the place as to what you were going to do when you got there?

A. When we got in the alley, he said he would go on and look in to see if there was anybody in there.

Q. Who said that?

A. Eddie Shepard. He went around and looked in the front window and then he came back and me and my brother was waiting in the alley, then he come back and said nobody was in there.

Q. Then what did you do?



A. After he come back he took a piece of iron and knocked the window out.

Q. Who did, you or Edgar?

A. Edgar, he threw it.

Q. Now, after Edgar threw that piece of iron through the window and broke the window, then what happened?  
[fol. 41] A. The night watchman came to the door.

Q. And did he open the door?

A. Opened the door.

Q. Did he come all the way out in the alley when he opened the door?

A. A little ways.

Q. And what happened when he came out a little ways?

A. Me and my brother grabbed him.

Q. When you grabbed him, what happened?

A. We started fighting and hitting him.

Q. What were you hitting him with?

A. Well, my brother had a piece of iron and me and Eddie Shepard had a stick.

Q. You were hitting him with these things that you had, were you?

A. Yes sir.

Q. And then what happened?

A. And then after we hit him with the stick, he started to tussle around.

Q. And did you three keep hitting him?

A. I stopped and I said, don't hit him no more, but they kept it up, my brother and Shepard, and then I started hitting him too on the legs.

Q. Then what happened after you kept on hitting him?  
[fol. 42] A. I told Eddie Shepard to go and get a rope.

Q. Then what happened?

A. Then we tied him up.

Q. Who tied him up?

A. My brother tied him up.

Q. And what did you tie him up to?

A. A post.

Q. Was that an iron post there?

A. Yes.

Q. Sort of a big pipe?

A. Yes.

Q. And is there a wooden cabinet right next to where that iron post is at?

A. Yes.

Q. Who tied a towel around his neck?

A. Eddie Shepard did, he tied it around because his head was bleeding.

Q. Where did he get the towel?

A. I don't know.

Q. Now, after you had the watchman tied up against this post, was he conscious or unconscious?

A. Well, he was conscious, he was breathing, breathing kind of hard.

[fol. 43] Q. Was the watchman knocked out after you got through tying him up to the post?

A. No sir, he wasn't knocked out.

Q. After you finished tying the watchman up to this post then what did the three of you do?

A. We went on through—went on back to the front.

Q. Is that the office part?

A. Yes, the office.

Q. Who went back to the office?

A. I did.

Q. Who else went with you?

A. Eddie Shepard.

Q. And where did your brother James go?

A. He was looking around.

Q. Was he supposed to act as lookout for you?

A. No sir.

Q. When you got in the office, did you find a safe there?

A. Yes sir.

Q. After you found the safe what did you do?

A. Went and got some tools.

Q. Who did?

A. Me.

Q. What kind of tools did you get?

[fol. 44] A. A chisel, a rubber handle—

Q. What else besides a hammer and chisel?

A. A small crowbar, a crowbar about that big (indicating).

Q. Indicating a crowbar of about three feet. Then what did you do after you got these tools?

A. Well, we started beating on the safe.

Q. Who did?

A. I did.

Q. And what did you do after you started to beat on the safe?

A. Then I kept on working at the safe.

Q. Did you break the combination lock off?

A. Yes sir.

Q. At the time you were doing this, where was Edgar Shepard.

A. Well, he was at the door looking out.

Q. And where was James at this time?.

A. He was helping me, we all took turns on it.

Q. Did you finally open the safe?

A. Yes sir.

Q. Did you get anything out of the safe?

A. No sir, we didn't get no money at all.

Q. Well, what did you do after you found there was no money in the safe?

[fol. 45] Well, we started back to the back to go out.

Q. And on the way out did anybody do anything?

A. Eddie Shepard put a blanket over him.

Q. Over who?

A. Over the man, the night watchman.

Q. Was he still breathing at that time?

A. Yes.

Q. What about a fire extinguisher?

A. Well, he said he liked to play with them or take and leave the water out of them.

Q. What did he do with the fire extinguisher?

A. He started shooting it up to the ceiling and then down on the floor and shoot it all around.

Q. Did he do anything with the night watchman?

A. Yes, he squirted some water on him.

Q. Then after Edgar Shepard finished playing with this fire extinguisher, what did the three of you do?

A. Went on out.

Q. Where did you go?

A. I went on home.

Q. Who went with you?

A. All three of us went.

Q. And after you got home what did you do?

[fol. 46] A. I put on my clothes.

Q. Then what did you do?

A. Went on the South Side.

Q. Before you went on the south side, did you go any place with the boys?

A. Yes.

Q. Where did you go with the boys?

A. Went on straight down Western to some cars down there, in Jesse's car, a car lot on that side of the street.

Q. On the east side of the street?

A. Yes.

Q. Who went riding in Jesse's car?

A. Me, Eddie Shepard, my brother James and my wife and his wife.

Q. Whose wife?

A. My brother Jesse's wife.

Q. And where did you go to on Western Avenue?

A. To the car lot.

Q. What did you do when you got to this car lot?

A. Got in a little car and started riding around.

Q. Now, when you got home after you finished at this furniture place was it still light outside?

A. No sir, it was just getting dark.

[fol. 47] Q. And when you got on the South Side, it was getting dark, too?

A. Yes sir.

Q. By the South Side I mean on Western Avenue.

A. Yes.

Q. After you finished riding around on these little racers where did you go?

Q. We rode around a little while, and my brother was out of gas with the car and then he say he got to hurry up and get home.

Q. Did you drive back then to your neighborhood?

A. Yes sir.

Q. Did you go to your house or did you go to Edgar Shepard's house?

A. I went to my house and from there I went on South.

Q. What happened to Edgar Shepard?

A. I don't know, him and my brother stayed home.

Q. Where did you go when you went to the South Side?

A. I went to the Brookmont Hotel.

Q. Who went with you?

A. My wife.

Q. When did you find out this man who was the watchman at this furniture place was dead?

[fol. 48] A. I seen it in the paper.

Q. What day?

A. Let's see—

Q. This happened on Sunday, didn't it?

A. Well, I think I seen it on a Tuesday, if I ain't mistaken.

Q. Where were you at the time you saw this in the paper, where, on the South Side or West Side?

A. I was on the South Side in the bed.

Q. And did you then come back to the West Side?

A. The next day I did.

Q. Where did you stay at?

A. Then I went to see my grandmother and stayed there.

Q. Did you talk to your brother James Norvell and Edgar Shepard about this after you found out the watchman was dead?

A. Yes.

Q. When did you first learn that the police were looking for you?

A. After I got through killing the man—I didn't know the police was looking for me then.

Q. Well, the police tried to arrest you, did they not, on September 17th?

[fol. 49] A. Yes sir.

Q. That was last Wednesday?

A. Yes.

Q. Where were you when they tried to arrest you, at what place?

A. In my grandmother's house.

Q. Where is that located?

A. 1958 Hubbard.

Q. Where does she live, on the first, second or third floor?

A. Third floor.

Q. When the police tried to arrest you, what did you do?

A. Jumped out the window.

Q. Did you jump from that window to the floor or to another window?

A. Another window.

Q. And then what did you do?

A. Then I went through a lady's house and down the back stairs.

Q. When you got downstairs, where did you go?

A. I went through a little gangway, a little gangway and I went that way in another little areaway about that wide.

Q. Then where did you go?

[fol. 50] Then I went on across Damen and when I run across Damen the police come and they shot at me, I think two times, and the other shot caught me in my leg.

Q. Which leg were you hit in?

A. The right leg.

Q. They didn't arrest you at that time though, did they?

A. No sir.

Q. Now, after you were shot, did you keep on running?

A. Yes sir.

Q. Where did you go?

A. I jumped over a fence and a fence.

Q. Well, where did you finally land up?

A. I landed by the junk shop.

Q. Where is that junk shop at?

A. On Hubbard.

Q. Did you hide there?

A. For a little while, about an hour.

Q. There where did you go?

A. Then I went over to my mother's house, but she didn't know I was there.

Q. Where is your mother's house at?

A. On Fulton.

[fol. 51] Q. What is the address on Fulton?

A. I don't know 233 k I think it was.

Q. By your mother's house, you mean your wife's mother's house?

A. Wife's mother's house.

Q. Did you stay there all night?

A. No sir, she didn't know I was there, I didn't have no clothes on.

Q. Well, when you ran away from the place to avoid arrest you ran away naked?

A. Yes.

Q. And you ran down the street naked, is that right?

A. Yes sir.



Q. Well, all right. Now, you were at your grandmother's house, is that right?

A. Yes.

Q. And how long did you stay there?

A. Well, I didn't stay no time, I went in the basement—the basement door was open and I went down there seeing if I could find some clothes to put on and I found a pair of pants and jacket and put them on.

Q. Then where did you go?

A. Then I went in a car on Walnut and slept.

[fol. 52] (Q). Did you sleep all night in this car?

A. Yes sir.

Q. You knew the police were out looking for you though, didn't you?

A. Yes.

Q. All right, where did you go the next morning, which was Thursday morning, where did you go?

A. I went to a lady's house.

Q. What is her name?

A. I don't know her name.

Q. Where is her place at?

A. On Fulton.

Q. How long did you stay at this woman's place?

A. About three days.

Q. That is from Thursday until Saturday?

A. Yes sir.

Q. Where did you go—did you go out of the house at all during those three days?

A. No sir.

Q. Where did you go to after you left her place on Saturday?

A. Then I went over to my cousin's house.

Q. Where is your cousin's house?

A. I think on Blue Island.

Q. What is your cousin's name?

[fol. 53] A. Boydahl.

Q. And did you stay there Saturday?

A. Yes sir.

Q. Did you sleep there Saturday night?

A. Yes sir.

Q. Then where did you go to Sunday morning, that is this morning?

A. Oh, let me see, then I went and stayed in a hotel on 29th street.

Q. What is the name of the hotel?

A. I don't know the name of the hotel.

Q. When did you stay there?

A. Last night.

Q. And you didn't sleep at you cousin's house on Blue Island then?

A. No sir.

Q. When you got up this morning, where did you go?

A. Then I come over here.

Q. Where did you go to over here?

A. In the park.

Q. What park?

A. Union park?

Q. How long did you stay in Union Park?

A. That is when No. 7 rolled up.

[fol. 54] Q. Just before squad No. 7 came up?

A. Yes.

Q. When you saw them coming, what did you do?

A. Started running.

Q. Did they chase you?

A. Yes sir.

Q. Where did you run to?

A. I went around through the alley and come back to the park.

Q. When you got back to the park, what happened?

A. Then I walked across and then I seen Red, you know, a police squad, and they looked at me and they kept going, the Union Park Police, he kept going.

Q. Then what happened?

A. Then I run through the lot and one guy that was in No. 7, he seen me and then I turned around and started running back.

Q. Then what happened?

A. Then I went up some stairs on Lake and Ashford and knocked out a window and went in the house.

Q. Did you know anybody in that place that you knocked out a window and got into?

A. No sir.

[fol. 55] Q. All right, when you got in that apartment what happened?

A. Then I went out the back door.

Q. Into the alley?

A. No sir, up on the roof.

Q. And what happened while you were on the roof?

A. Then I stayed up there and I knocked a window out in a hay factory.

Q. Then what did you do?

A. Went down there.

Q. And how long did you stay there?

A. About fifteen minutes.

Q. Then what did you do?

A. Then I went to the back door and the Police seen me and he said come out.

Q. And they caught you right in this hay place?

A. Yes.

Q. Now, while you were running around and jumping through the various places that you have just told us about, is that where you got that head injury?

A. Yes.

Q. The time that you were arrested was about eleven o'clock, is that right?

A. Yes sir.

[fol. 56] Q. Now, in addition to being called Willie, do you have a nickname that you go by?

A. They call me Babé.

Q. Has Edgar Shepard got a nickname?

A. Yes, Gumpy.

Q. Is he also called Junior?

A. Yes sir.

Q. And your brother Jimmy has no nickname, has he?

A. He hasn't got no nickname.

Q. Is there anything else you want to tell us about this occurrence that you have not told us?

A. I told you everything.

Q. Now, after this statement is written up and you have a chance to read it, and you find it contains everything that has gone on between us here and the questions I have asked and the answers you have given, will you sign it?

A. Yes sir.

Q. Why?

A. Because it is the statement made and it is the truth.

[fol. 57] Mr. LEEDS: That is all.

(Signed) Willie Norvell.

Witness: —.

Closing arguments.

#### JUDGMENT AND SENTENCE

The Court: All 3 defendants are found guilty of murder.

Defendant Willie Norvell sentenced to the penitentiary for 199 years; defendants James Norvell and Edgar Shepard sentenced to 50 years in the penitentiary.

Oral motion for new trial overruled.

Oral motion in arrest of judgment overruled.

I, Gerald J. Healy, do hereby certify that on the 27th day of October, 1941, I was one of the Official Shorthand Reporters of the Criminal Court of Cook County, Illinois, and that as such Official Shorthand Reporter, I reported in shorthand the testimony taken and proceedings had on the dates shown of record in the 144 pages of transcript contained herein, in the case of the People of the State of Illinois vs. Willie Norvell, *et al.* / Indictment No. 41-1473, before the Honorable Edgar A. Jones, one of the judges of [fol. 58] the Criminal Court of Cook County, and do hereby certify that the above and foregoing transcript is a true and correct report of the testimony taken and proceedings had in the above entitled cause on the dates as shown of record.

(s) Gerald J. Healy, Official Shorthand Reporter  
Criminal Court of Cook County.

Certificate to report of proceedings of Hon. Richard B. Austin, March 24, 1961.

Petitioner's Exhibit 1, court reporter notebook of E. M. Allen, Book No. 815, containing shorthand notes taken from October 24 to 29, 1941. Admitted in evidence June 29, 1961; certified and ordered filed December 8, 1961, by Hon. Joseph J. Drucker.

Report of proceedings held before Hon. Richard B. Austin.

[fol. 59] HEARINGS BEFORE JUDGE AUSTIN—June 29, 1961

EVIDENCE ON BEHALF OF DEFENDANT WILLIE NORVELL

NED HOSFORD testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Ned Hosford. For the past 14 years, I have been an official Court Reporter of the Criminal Court of Cook County.

I am appearing here today pursuant to a subpoena duces tecum that required me to produce a set of shorthand note books. I have the shorthand notes that E. M. Allen took in this Willie Norvell case on October 29, 1941 before Judge Jonas. I do not have any other notes for any other dates that Mr. Allen was in attendance on this case.

I have Miss Margaret Meek's shorthand notes for the morning of November 3, 1941. I can't locate any notes in this Norvell case that morning.

Petitioner's Exhibit No. 1 for identification is the book which I obtained yesterday from the basement vault of the Criminal Court Building enclosed in a large package of notebooks with the name E. M. Allen and certain dates upon the outside or wrapper of this package. It purports to be the notes that were taken by Mr. Allen on the dates indicated. The dates included in the notebook are October [fol. 60] 24, 1941 and October 29, 1941.

There are notes in the book for October 29 that pertain to the Willie Norvell case. The notes do not being on a numbered page. The name of the case and the lawyers present, together with the names of the defendants, are in long hand at the beginning of the case. The Judge is indicated on the front cover of the notebook as being Judge Jonas, October 29.

There is a notation on the front of the book that indicates that the estimated testimony covered 250 pages with statements, or 200 pages without statements. From my experience as a court reporter, I know that 250 or 200 indicates number of pages and not dollars or anything

else. This is the number of transcribed pages, not shorthand notes.

I cannot read the shorthand notes that Mr. Allen took in this case. These notes are basically a Munson system of shorthand. I knew Mr. Allen during his lifetime and often we would compare notes I recall very vividly one day looking at his notes and asking him what sort of shorthand he wrote. He laughed and said it was the "Allen system." He had incorporated in this original Munson system a great many arbitrary symbols of his own that [fol. 61] meant something to him, but mean nothing to me.

On one occasion, I was present when a Munson shorthand writer, a very excellent reporter, looked over Mr. Allen's notes in another case, not in this case, and said that the notes were well written, that he could not read some of it. Some of it was unintelligible to him, and it would require a great deal of study on his part to familiarize himself with Mr. Allen's notes before he could ever make a transcript. For that reason he declined to undertake the job of preparing a transcript from Mr. Allen's notes.

To my knowledge they have not taught Munson shorthand system in any school for 20 or 25 years. There are probably still some people in the court reporting business that may use Munson shorthand, but I don't know of any.

In my experience, I have run across perhaps 3 or 4 people engaged in the court reporting business that write Munson shorthand. Mr. Allen was one of them. There were some others that are now deceased.

The Court: The Court having had some contact with the Bragg case, and having been a witness in the Bragg case, in an effort to reconstruct a bystander's Bill of Exceptions, would like to say for the record that I am convinced [fol. 62] as a result of my investigation and connection with the Bragg case that there probably is no one in the country who can transcribe Mr. Allen's notes.

(Petitioner's Exhibit No. 1 admitted into evidence.)



Cross-examination.

By Mr. Robbins:

I did not make any effort to read these notes: I looked them over and I made no effort because it isn't the system of shorthand I write. It is as foreign to me as it would be to you, Mr. Robbins, and it means nothing to me. It is as meaningless as Sanskrit. With my experience, by looking I can tell whether or not I would be able to decipher any particular word.

Re-direct examination.

By Mr. Sullivan:

I brought with me the diary book of the official court reporters for the period in question. On October 27, 1941, the diary indicates the reporter before Judge Jonas was Miss Gene Charters. She now resides in St. Petersburg, Florida.

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CLAUDE W. B. HOLMAN testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Claude W. B. Holman. I am an attorney at law. I represented Willie Norvell and James Norvell in the trial of this matter in 1941.

[fol. 63] I do not remember the names of any of the witnesses who appeared on behalf of the State. I do not know how many witnesses there were. I do not remember the names of any witnesses for the defense. I am not even sure whether the defendant testified or not. I do not recall whether or not there were any exhibits introduced. I probably interposed objections on behalf of Willie Norvell during the trial, but what they were or the rulings thereon, I couldn't tell you. I don't remember any objections made by the State, but I can't imagine the State letting me put my case in without objection.

I do not remember the testimony of any witness at the trial, or any portion of it. I do not have in my office any notes, documents or files which would refresh my recollection in this matter.

I do not recall whether or not I made any motions during the trial. I have no independent recollection of the State making any motions in the trial. I have an independent recollection that at the end of the trial I felt real hurt personally when the other defendants got a considerable lesser sentence than my defendant. I remember very distinctly that I felt Judge Jonas had hurt me personally by making that great disparity between the sentences. I don't remember [fol. 64] ber what the evidence was. It may well be that in light of the testimony, Willie Norvell deserved a more severe sentence. Other than what I have just testified to, I have no other recollection of anything that occurred. I don't remember Willie Norvell executing a jury waiver. I don't remember anything at all.

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Cross-examination.

By Mr. Robbins:

At the time of the trial I was privately appointed counsel by this young man or his mother or grandmother. I can describe her. She was a little, small, thin woman.

I have no recollection whether or not any effort was made by Willie Norvell from the day he was sentenced to this date with reference to obtaining a transcript of his trial for an appeal.

I was active in the Criminal Court in 1941, 2 or 3 days a week or maybe more often. I remember a court reporter named Mr. Allen some years back. The name Gerald Healy rings a bell. I do not recall Margaret Meek by name. I remember the name Miss Charters. I remember seeing those people when I went to trial.

I have no independent recollection whether there were motions for a new trial made in the regular course after [fol. 65] the trial. All of the constitutional guarantees which were afforded my client, Willie Norvell, were asserted at that time. I have no independent recollection of this case, but I give the defendant every constitutional guarantee that the law affords.

I have no recollection now on whether or not I was ever called upon for an appeal in this matter. I have no recollection one way or the other whether I was called upon to obtain a transcript of the trial.

EDGAR SHEPARD, testified as follows:

Direct examination.

By Mr. Sullivan:

My name is Edgar Shepard and I am presently in custody in the Illinois State Penitentiary at Joliet. I was a defendant in the case of the People vs. Willie Norvell, James Norvell and Edgar Shepard, No. 41-1473, which was tried in this Court in October and November, 1941. I am not now in custody on the sentence I received in that case. I am in custody on a new crime.

It is my recollection I was represented by Herman Aschen. I was present during the course of the trial in October and November, 1941. The Judge was Edgar A. Jonas. [fol. 66] I have never talked to Mr. Sullivan or Mr. Pfaff before today.

During the trial, the officers, my mother and my sister were present in the courtroom. Also present were Willie Norvell's grandmother and brother. His wife, Annie Norvell, was there too. Willie Norvell's brother that was present is Jesse Norvell. Willie's grandmother's name is Hattie Williams. My mother is now dead. My sister is still alive. She is Ruby Lee Norvell. She married Willie's brother Jessie.

James Norvell was present during the trial. Those people are the only people I can recall were present at the trial, except the State's Attorney. I do not remember who the State's Attorney was. I don't remember the name of Willie Norvell's lawyer. I remember there was no jury.

I can't remember the names of any persons who testified on behalf of the State or what their testimony was. I think there was a policeman who testified, but I don't recall his name. I don't recall what his testimony was.

I did not testify, nor did Willie Norvell nor James Norvell. There was no witness who testified on my behalf. I can't think of any witness who testified on behalf of Willie [fol. 67] Norvell. I do not recall whether or not any exhibits were introduced by the defense or whether or not there were any objections made by the State's Attorney during the course of trial. I do not recall whether or not any objections were made by the defense attorney in the course of the trial. I do not recall whether any oral motions were made by the State's Attorney or by the defense attorney. I do not have any knowledge or recollection of anything that occurred in this cause. I was young then and I wasn't paying any attention.

Cross-examination.

By Mr. Robbins:

The Public Defender represented me. I don't know his name.

WILLIE NORVELL, JR., testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Willie Norvell, Jr. I was a defendant in this case in 1941. I was present at the time of trial. I don't remember the name of the attorney who represented me. I never did know his name. My grandmother got him.

My grandmother, my wife, my brother, my sister-in-law, an aunt, my brother and I were present in the court room at the time of trial. My aunt's name is Quinillo Thomas. [fol. 68] She is living. I think her address is 1429 South Keeler. The name of the Judge was Edgar A. Jonas.

My grandmother died in 1955. My wife is living. Her address is 1457 South Kenneth. My brother Jesse is living. I don't know his address. I had one letter from him in 19 years I have been locked up. He is still in Chicago. I don't know whether Jesse was there all during the trial. The only witnesses for the State was the arresting officers. I don't remember their names. I have copies of the arrest slips.

Their names are on there. The names are Nygren, Madden, Vachlon. I am not sure if 2 or 3 of them testified. I am not sure how many testified. I don't recall what their testimony was. I don't recall that the State had any other witnesses testifying. My grandmother and my aunt testified in my behalf. I don't remember what my grandmother testified to, nor do I remember what my aunt testified to.

I don't recall what any other witnesses testified to. I don't recall whether my attorney made any objections during the trial. At that time I didn't know anything about the law.

I can't recall whether the State made any objections [fol. 69] during the trial. I do not recall whether the defense or the State made any oral motions during the trial.

I recall there was an exhibit entered at the trial, a chart about 10 feet long. It was a diagram of the block where they said the crime was committed. I don't know who introduced that exhibit, the State or the defense. I don't recall any other exhibits that were introduced.

The only other thing that I recall that occurred during the trial was in the last part. The Judge said, "I sentence Edgar Shepard and James Norvell each to 99 years in the penitentiary and Willie Norvell I sentence you to 199 years in the penitentiary." Then the other lawyer asked the Judge to please cut down the time. So the Judge said, "Edgar Shepard and James Norvell I sentence you to 50 years in the penitentiary," but he didn't say anything about me. That is all I recall of the last part of the trial.

I don't know who paid my attorney's fee for defending me in this case. It might have been my grandmother or my aunt. I did not have a penny at the time of trial. I did not have any money after the trial was over and I went to Stateville. I got a little bit of money down there, very [fol. 70] little money, by selling blood. From the time I went down to Stateville in 1941 until today, I have not had any money, except maybe 5 or 10 dollars, something like that, selling blood on projects like the malaria project and doing TB and cancer and different programs like that. But money I never had, say like \$700 or \$800 or \$1,000. Perhaps, I had up to \$20 at one time, because I sell blood. Other than that I have had no money since I have been incarcerated.

## Cross-examination.

By Mr. Robbins:

I don't remember how long the trial took. I remember my grandmother testified and 2 arresting officers, but what their testimony was I can't recall. I don't know where James Norvell is today. He could be dead. I haven't seen him since he went out of the penitentiary. He and Shepard got out on parole as a result of shorter sentences.

I cannot repeat word for word what I heard any witness say at the trial. I do not recall whether someone testified that they saw a person alive one day and dead the next. I don't think there was a doctor that testified.

[fol. 71] Re-direct examination.

By Mr. Sullivan:

I have never seen Mr. Sullivan or Mr. Pfaff before this afternoon.

July 18, 1961.

Irving Robbins, Assistant State's Attorney: Captain Walter McGlohn is now deceased. I have a certificate of death by the County Clerk. Captain LeRoy Steffen is now retired and is living in Florida. There is no process available to bring him back to testify. As to Anton Remenih, who was a witness to the statement of Willie Norvell, State's Attorney's officers could find no trace of him. They were sent to his last known address, 56 Belleview Place, and they could find no trace of Mr. Remenih.

WALTER RUSIN testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Walter Rusin. I am a retired police officer. I was a police officer in 1941. I do not remember a defendant named Willie Norvell in 1941. Very vaguely I re-



call a crime in which a warehouse watchman was murdered. I do not remember who was charged with that crime.

During my time as a police officer I served as a witness to statements that were given by persons who were arrested. I was present at the time a statement was given [fol. 72] in the case involving the watchman who was murdered. That could have been the statement of Willie Norvell.

I was not called as a witness at the trial of Willie Norvell. I did not attend any portion of the trial. I do not know whether Captain McGlooin was called as a witness.

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QUAINELLA THOMAS testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Quaibella Thomas. I live at 1426 South Keeler. I am the aunt of Willie Norvell. I was not present in the Criminal Court of Cook County in 1941 when Willie Norvell was tried for murder.

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RUBEN NORVELL testified as follows:

Direct examination.

By Mr. Pfaff:

My name is Ruby Norvell. I am a sister-in-law of Willie Norvell. I was present in 1941 at the trial of Willie Norvell. I was present during the whole trial.

No one appeared on behalf of the State except the police officers. I do not know their names. Other than the police officers and a member of the family of the deceased, they didn't have any other witnesses.

The police officers testified about having a call to go to [fol. 73] 1958 Hubbard and they would find Willie Norvell there, that he was connected with a robbery somewhere on

Leavitt and Fullerton on a night watchman. They testified they went there. They testified the call was received in August of 1941, I couldn't tell you the exact date. I do not recall any more of the testimony of these police officers.

I do not recall whether the lawyers for Willie Norvell cross examined the police officers. The only witnesses for the defense were Willie's grandmother and me. The grandmother is now deceased.

I testified that the police asked me about the whereabouts of the boys at the time the watchman was killed. To my knowledge I told them James Norvell had just come out of a hospital. I told them Willie Norvell was at home at that time. The State cross examined me.

I don't recall whether any exhibits were introduced on behalf of the State. I don't recall whether the defense offered any exhibits either. I recall the lawyers for Willie made a lot of objections. As to rulings, some they answered, some they didn't. I couldn't tell you whether the State's Attorney made any objections or motions during the trial. I don't remember whether the lawyers for Willie made any motions during the trial, nor do I remember any [fol. 74] comments that the Judge or State's Attorney made.

I am not divorced from Willie Norvell's brother, but we have been separated since 1949. I do not know his address. The last I heard he was in Chicago. I have not seen him since March 24, 1961.

#### Cross-examination.

By Mr. Robbins:

I recall the name Frank Czezik mentioned during the trial. He was the watchman who found the body. I don't recall whether he testified. I recall some testimony by the State as to the reenactment of the crime by James Norvell and Shepard.

There was testimony about Willie Norvell when they arrested him. They had to chase him. He was in the house when they came. I testified pertaining to that arrest. Willie at that time went out on the porch of another lady's back porch. The police had to pursue him and capture him a couple of days later, maybe a week.

I don't know whether there was any testimony that Willie gave a full and complete confession of his part in this hold up slaying. There were members of the family of the deceased who testified he was alive one day and dead the next.

[fol. 75] August 1, 1961.

EVIDENCE ON BEHALF OF THE STATE

ALBERT J. VACHLON testified as follows:

Direct examination.

By Mr. Robbins:

My name is Albert J. Vachlon. I was a police officer back in 1941 and 1942. I recall very vaguely a case entitled People vs. Willie Norvell. I recall that we had a murder in the district, but I don't recall the investigation. I took part in the chase in that case. That took place some time later. I did not testify in the case. I was not called.

Cross-examination.

By Mr. Sullivan:

I did not attend any part of the trial of Willie Norvell. I was not present at any of it.

MILFORD NYGREN testified as follows:

Direct examination.

By Mr. Robbins:

My name is Milford Nygren. I am a policeman in the City of Chicago. I am assigned to the Chief Clerk's office.

I was a police officer in 1941 and 1942. During that time I was assigned to the 27th District. I recall a case during

those years that involved Willie Norvell. I took part in the arrest of Willie Norvell.

As a result of that arrest I was called as a witness [fol. 76] in the ensuing case that was based on indictment No. 41-1473 against Willie Norvell. I don't recall exactly what I testified to at that time. I did not see the deceased's body. I testified about the arrest of Willie Norvell, that is all. That is all I testified about. I know that Willie Norvell received a sentence of 199 years.

#### Cross-examination.

By Mr. Sullivan:

My rank is patrolman. I don't believe other witnesses were excused from the trial during the testimony of other witnesses. It is my recollection and I am almost certain that I sat through the entire trial.

I think Captain McGlooin testified at the trial. I think the owner of the furniture factory where this crime was committed, I don't recall the name, Czyn or Czelmy, or something like that. Other than those two I just can't recall. I can't recall who did testify.

I couldn't say whether or not James Slattery from the 27th District testified. I don't recall whether he did or not. I am almost sure Patrick McNamara from the 27th District testified, but I can't say for sure. George Ruchrich was there but I don't recall whether he testified. Sergeant John Hannon was there, but I can't say whether [fol. 77] he testified. I was at the trial, but I just don't recall anything about it. I don't recall anything that was said in the opening statements. I can't recall what questions were asked of me and what answers I gave at the trial on direct examination. I can't recall the questions and answers on cross examination.

I have no recollection of the testimony given on either direct examination or cross examination by Captain McGlooin. I have no recollection of the testimony given by the factory owner either on direct or cross examination. I have no recollection of the testimony given by Officer McNamara either on direct or cross examination. I don't have any recollection of any of the testimony of any of the other witnesses during the course of the trial.

I don't recall whether or not any objections were made in the course of the trial either by the State or by defense counsel. I don't recall any exhibits being introduced into evidence. Beyond what I have testified to, I can't recall what took place at the trial.

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JAMES J. MADDEN testified as follows:

Direct examination.

By Mr. Robbins:

My name is James J. Madden. I am a detective assigned [fol. 78] to the 6th Area, General Assignment. I was a police officer during the years 1941 and 1942. I was assigned to the 27th District.

I recall an indictment during the course of those two years that involved Willie Norvell. I did not attend the trial resulting from that indictment. I did not testify against any of the defendants at the preliminary hearing or at the regular trial.

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ARTHUR SWANSON testified as follows:

Direct examination.

By Mr. Robbins:

My name is Arthur Swanson. I am a retired police officer. I was a police officer during the years 1941 and 1942. At that time I was a patrolman assigned to the 27th District, Warren Avenue.

I have heard tell of the case of murder against Willie Norvell, but I attended no hearing of any kind. I used to work on the desk and in the lock-up and never attended trials.

**FURTHER EVIDENCE OF BEHALF OF DEFENDANT**

**JAMES NORVELL** testified as follows:

**Direct examination.**

**By Mr. Pfaff:**

I am the same James Norvell who was a defendant in the case of the People vs. Edgar Shepard, Willie Norvell and James Norvell. I attended all phases of that trial back in 1941. My lawyer was Westbrook. I was present [fol. 79] at all sessions of the trial.

I don't remember any of the opening statements that were made either by the State or by any of the defense attorneys. I don't recall who testified for the State. Some police officers testified. I don't know their names. I don't know what they testified to.

My aunt, Hanna H. Norvell, testified for the defense. Her name was Hanna Davis at that time.

I don't recall whether or not any exhibits were introduced by the State or by the defense. I don't remember whether or not Willie Norvell's attorney made any objections during the trial. I don't know whether the State made any objections during the trial. I can't remember whether the State made any motions during trial. I don't know whether the attorney for Willie Norvell made any motions during the trial. I don't remember the testimony of any witness or any portion of the testimony from any witness. I have no recollection of what transpired other than what I have told you. I did not testify at the trial, nor did my brother. Edgar Shepard did not testify either.

I did not obtain a transcript of the testimony of the proceedings at the trial. I tried to obtain one. That was in [fol. 80] 1941, 1947 and I think 1949. Willie Norvell tried many times to get a transcript. I don't know when, but I know it was quite a few times. I don't think Edgar Shepard ever tried to get a transcript.

Mr. Sullivan: We have now obtained the testimony of all of the persons that we were able to determine were present



at the trial. I would like to have the State stipulate that if Mr. Norvell were recalled as a witness he would testify that shortly after his incarceration in the penitentiary pursuant to the conviction in this case, he made inquiry of the Official Shorthand Reporter concerning his obtaining a transcript, and what was necessary for him to obtain the transcript, both as to whether or not he could get it without the payment of costs and if costs were necessary what the charges would be.

The Court: And you would further stipulate that because of his indigence he was unable to come up with the cost of the transcript?

Mr. Sullivan: Yes, your Honor. And he has already testified to his indigency.

The Court: I see no harm in that. Do you so stipulate? [fol. 81] Mr. Robbins: Yes.

Certificate of Hon. Joseph W. Drucker to report of proceedings, December 8, 1961.

Certificate of Clerk of the Criminal Court of Cook County, dated December 11, 1961.

Respectfully submitted, Thomas P. Sullivan, Robert E. Pfaff, Attorneys for Plaintiff in Error Willie Norvell.

[fol. 82] IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Present: Harry B. Hershey, Chief Justice.

Justice Joseph E. Daily, Justice Ray I. Klingbiel, Justice Roy J. Solfisburg, Jr., Justice Walter V. Schaefer, Justice Byron O. House, Justice Robert C. Underwood.

William G. Clark, Attorney General.

Robert G. Miley, Marshal.

ATTEST: Mrs. Earle Benjamin Searcy, Clerk.

[fol. 83]

Docket No. 36830

Agenda 31

March, 1962

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

WILLIE NORVELL, Plaintiff in Error

OPINION—Filed May 25, 1962

Mr. Justice House delivered the opinion of the court:

On November 3, 1941, after a three-day bench trial, the criminal court of Cook County found defendant guilty of murder and sentenced him to the penitentiary for a term of 199 years. The People have stipulated that defendant would testify that immediately after his conviction he made efforts to obtain a stenographic transcript of the trial proceedings for the purpose of having his conviction reviewed and that a transcript was not furnished because he could not pay for it. In 1956, after Rule 65—1(2) had been adopted, the criminal court ordered the official court reporter to furnish defendant, without cost, a complete stenographic transcript of the entire trial proceedings because such a transcript was necessary to fully present for review alleged errors in his trial. Only a portion of the transcript has been furnished to defendant.

The defendant's trial was conducted on October 29, 30 and November 3, of 1941. E. M. Allen was the court reporter of the trial on October 30 and the morning of November 3. Gerald J. Healy was the court reporter of the trial on October 30 and the afternoon of November 3. Healy transcribed his stenographic notes and a copy of that transcript has been furnished to defendant. The stenographic notes made by E. M. Allen, who died on August 26, 1949, have never been transcribed. A hearing was conducted to determine whether Allen's notes could be transcribed or a bystanders report of proceedings constructed.

After it was determined that the stenographic notes of E. M. Allen could not be transcribed and that a bystanders report of proceedings could not be constructed for the portions of the trial attended by Allen defendant moved for a new trial. This motion was denied and defendant sued out this writ of error.

Defendant asserts that in *Griffin v. Illinois*, 351 U.S. 12, 76 C. Ct. 585, 100 L. ed. 891, the Supreme Court held that where a State provides for review of alleged errors in a criminal trial which can be reviewed only by a transcript of proceedings at the trial, the State denies a constitutional right of an indigent defendant when it fails to furnish him with a free transcript or other suitable means for such review; that the court in *Eskridge v. Washington State Board* [fol. 84] of *Prison Terms and Paroles*, 357 U.S. 214, 78 S. Ct. 1061, 2 L. ed. 2d 1269, held that the ruling of the *Griffin* case was applicable even though an indigent defendant now seeking a transcript had been convicted and sentenced long before the *Griffin* case; that he was indigent when sentenced and requested a free transcript; that this request was denied; that his constitutional right to now have his conviction fully reviewed has been denied; and that his conviction must therefore be set aside and a new trial granted, which if it results in conviction, can be fully reviewed.

A similar assertion was made in *People v. Berman*, 19 Ill. 2d 579, where it was impossible to furnish defendant with a transcript of his trial because no stenographic notes of the proceedings had been made. We held that since it was not defendant's indigency which now prevented us from reviewing his conviction, the constitutional right announced in the *Griffin* case had not been denied. The Supreme Court

of the United States thereafter denied Berman's petition for writ of *certiorari*. (365 U.S. 804, 81 S. Ct. 472.) The defendant points out, however, that the United States Supreme Court subsequently denied a petition for writ of *certiorari* (82 S. Ct. 59, 7 L. ed 2d 39.) in the case of *Patterson v. Medberry*, 290 F.2d 275, where the United States Court of Appeals for the Tenth Circuit held that because an indigent defendant's 1939 trial could not be reviewed, a transcript of that trial being unavailable, the defendant must be given a new trial within six months or released from prison. Because the Court of Appeals for the Tenth Circuit, and probably the Seventh Circuit, (See *United States ex rel. Westbrook v. Randolph*, 259 F.2d 215) have given the *Griffin* and *Eskridge* cases an interpretation different from our interpretation (see *People v. Berman*, 19 Ill.2d 579,) we give the question further consideration.

On April 23, 1956, the United States Supreme Court held that a State denies a constitutional right guaranteed by the fourteenth amendment if it allows all convicted defendants to have appellate review except those who cannot afford to pay for the records of their trials. (*Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585, 100 L. ed. 891.) The effect of this decision was to invalidate any financial barriers imposed by the State which restrict the availability of appellate review for indigent defendants. (See *Burns v. Ohio*, 360 U.S. 252, 79 S. Ct. 1164, 3 L. ed. 2d 1209; *Smith v. Bennett*, 365 U.S. 708; 81 S. Ct. 895.) In the *Eskridge* case the court did not hold that the failure to furnish defendant [fol. 85] with a free transcript in 1935 denied him a right guaranteed by the fourteenth amendment, but held that the failure in 1956 to furnish him with a free transcript which was still available denied him of such a right. This holding made it clear that such financial barriers could no longer be imposed by the State even though the indigent defendant was sentenced prior to the time restrictions were invalidated. We had, of course, already removed financial barriers which prevented indigent defendants sentenced prior to the *Griffin* case from now securing free transcript if it is possible to obtain them. Ill. Rev. Stat. 1957, chap. 110, par. 101.65-1(2).

There is no indication in the *Griffin* or *Eskridge* cases however that the financial barriers then and there announced to be invalid were always invalid restrictions. The

economic restrictions invalidated by the *Griffin* decision were, of course, imposed by statutes, application of statutes, court rules and court decisions. It is apparent that the retroactive invalidity of these restrictions must be examined in the light of those considerations which dictate the retroactive invalidity of a statute or prior court decision.

The court in *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 60 S. Ct. 317, 84 L. ed. 329, did point out that the invalidation of a statute cannot justify an all-inclusive statement of a principle of absolute retroactive invalidity. The court was there asked to rule upon the validity of a final decree entered pursuant to an act of Congress prior to the time the act was declared to be unconstitutional by the court. In commenting on the retroactive invalidity of the act, the court stated: "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. \* \* \* It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. \* \* \* Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and [fol. 86] of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified." (308 U.S. at 374, 60 S. Ct. at 318-319.) The court went on to hold the decree valid.

The actual existence and operative effect of the economic barriers which restricted the availability of appellate review for indigent defendants prior to the *Griffin* case is a fact which cannot be ignored. The invalidation of these economic restrictions could not undo the consequences already suffered as a result of their existence and operation. These

actualities dictate that only prospective effect be given to the invalidation of such restrictions.

We are of the opinion that the intent, purpose and effect of the *Griffin* decision was to merely invalidate all existing financial barriers imposed by the State which restricted the availability of appellate review for indigent defendants and were not to otherwise affect final judgments of conviction. (*People v. Berman*, 19 Ill.2d 579; Cf. *Chicot Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 60 S. Ct. 317, 84 L. ed. 329.) The judgment of the criminal court of Cook County denying defendant's motion for a new trial is affirmed.

Judgment affirmed.

[fol. 87] IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Present: Harry B. Hershey, Chief Justice.

Justice Joseph E. Daily, Justice Ray I. Klingbiel, Justice Roy J. Solfisburg, Jr., Justice Walter V. Schaefer, Justice Byron O. House, Justice Robert C. Underwood.

William G. Clark, Attorney General.

Robert G. Miley, Marshal.

Attest: Mrs. Earle Benjamin Searcy, Clerk.

No. 36830

PEOPLE STATE OF ILLINOIS; Defendant in Error.

vs.

WILLIE NORVELL, (Impleaded), Plaintiff in Error

Error to Criminal Court, Cook County, 41-1473

JUDGMENT—May 25, 1962

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceeding aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition



of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Criminal Court of Cook County aforesaid, be Affirmed in all Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 14th day of June, 1962. (Seal)

18/ Mrs. Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois.

[fol. 88] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 89] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1962

No. 413 Misc.

WILLIE NORVELL, Petitioner,

vs.

ILLINOIS

On Petition for Writ of Certiorari to the Supreme Court  
of the State of Illinois.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI  
—OCTOBER 15, 1962.

On Consideration of the motion for leave to proceed here-  
in in forma pauperis and of the petition for writ of certio-  
rari, it is ordered by this Court that the motion to proceed  
in forma pauperis be, and the same is hereby, granted;  
and that the petition for writ of certiorari be, and the same  
is hereby, granted. The case is transferred to the appellate  
docket as No. 513 and placed on the summary calendar.

And it is further ordered that the duly certified copy of  
the transcript of the proceedings below which accompanied  
the petition shall be treated as though filed in response to  
such writ.